

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 23-124V

Filed: July 26, 2023

Reissued for Public Availability: September 1, 2023

KYLE MCGINNIS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Decision on Entitlement

DECISION DISMISSING PETITION¹

I. Procedural History

On January 27, 2023, Kyle McGinnis (“Petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, *et seq.*² (the “Vaccine Act” or “Program”), alleging that he suffered from a “neurological injury” as a result of the influenza (“flu”) vaccine he received on January 28, 2020. ECF No. 1 at 1.

At an initial status conference on February 7, 2023, Petitioner indicated that he was in the process of finding an attorney to represent him. I gave him 30 days to file a status report updating the Court on his progress in securing legal representation. On March 14, 2023, Petitioner informed my law clerk via email that the firm of Conway Homer, PC, was in the process of reviewing his case. I gave Petitioner another 30 days to file a status report updating me on his progress in securing legal representation. On April 18, 2023, Petitioner informed my law clerk via email that Conway Homer had declined his case and that he wished to dismiss it. He stated that he had difficulty typing

¹ Pursuant to Vaccine Rule 18(b), this decision was initially filed on July 26, 2023, and the parties were afforded 14 days to propose redactions. The parties did not propose any redactions. Accordingly, this decision is reissued in its original form for posting on the Court’s website.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

and filing pleadings due to his injury. Accordingly, I set a status conference for July 24, 2023, to provide Petitioner with an opportunity to speak his motion for a decision dismissing his Petition.

At the July 24, 2023, status conference, Petitioner confirmed that he wishes to dismiss his petition. I informed Petitioner that I would issue an order involuntarily dismissing his petition for failure to prosecute. ECF No. 14. He agreed with this course of action.

II. Conclusion

Vaccine Rule 21(b)(1) provides that a “special master or the court may dismiss a petition or any claim therein for failure of the petitioner to prosecute or comply with these rules or any order of the special master or the court.” Petitioner has indicated that he does not intend to pursue the claims made in his petition and that he prefers that the petition be dismissed.

As such, **IT IS ORDERED THAT,**

Petitioner’s petition is hereby **DISMISSED. The clerk shall enter judgment accordingly.**³

A copy of this Decision shall be sent to Petitioner via U.S. Mail.

IT IS SO ORDERED.

s/ Katherine E. Oler
Katherine E. Oler
Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by each filing (either jointly or separately) a notice renouncing their right to seek review.